SINGLE BENCH
C.S.1001

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IN THE HIGH COURT OF JUDICATURE AT BILASPUR

WRIT PETITION NO. 3877 OF 2005

PETITIONER: M/s Airen Associates, a partnership firm duly registered under the relevant provisions of the Indian Partnership Act, 1932 having its head office at C-197, Vikaspuri, New Delhi and inter alia amongst other branches a branch office at 42/8, Motilal Nehru Nagar (East),Bhilai District Durg.

P.R. No. 3972 P.S.
Presented by Shri B. Ashwini
dated 11.8.05

VS

RESPONDENTS:

1. Bank of Baroda, a body Corporate, constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, having its Head Office at Mandwi Baroda, State of Gujarat and inter alia Zonal Office at Bank of Baroda, Building No.16, Sansad Marg, Post Box No.474, New Delhi-110001.
2. The Chairman and Managing Director, Bank of Baroda, Central Office, 3, Walchand Hirachand Marg, Ballard Pier Mumbai (Bombay)- 400 038
3. The Regional Manager, Bank of Baroda, registered office, LIC Building Pandri, Raipur.

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA.

(५५)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... WP 3877/05 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	24.8.2005 Shri B.P. Sharma, counsel for the petitioner. Heard on admission. The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India being aggrieved by the order dated 9.2.2005 (Annexure P-7) passed by learned 1st Additional District Judge, Durg whereby learned Additional District Judge has rejected the application filed by the petitioner herein for restoration of the civil suit. Brief facts leading to filing of this petition are that the petitioner herein filed a civil suit against the respondents herein under Section 20 read with Section 8 of the Arbitration & Conciliation Act, 1940. The said suit was fixed for arguments on 14.1.2005, however, on that day neither the counsel for the petitioner herein nor the petitioner was present in the court, therefore, the suit was dismissed in default. Thereafter, an application for restoration of suit was filed on behalf of the petitioner on 17.1.2005 mentioning therein that the petitioner was in Delhi in order to look after his ailing uncle and counsel for the petitioner was busy in some other court and by the time counsel for the petitioner reached at about 3 p.m. he came to know that the suit has been dismissed in default. Therefore, the application was filed on 17.1.2005, as the 15th & 16th were holidays.	

SP/FS/2005 - 20,000

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(45)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Counsel for the petitioner submitted that when the suit was dismissed in default counsel for the petitioner appearing before the court below was busy in some other Court and even no counsel was present on behalf of the respondents. He further submits that thereafter without wasting time, 15th & 16th being holidays, the application was moved on 17.1.2005, but learned trial court without giving any opportunity to the petitioner for adducing evidence in support of the application rejected the same and even notices were not issued to the respondents. Having heard learned counsel for the petitioner, I have perused the impugned order. The impugned order prima-facie appears to be perverse, therefore, I am of the considered opinion that issuance of notice to the respondents herein is going to cause further delay in the matter, therefore I am deciding this writ petition without issuance of notice to the respondents. The order impugned passed by the trial court is prima-facie perverse, in the first instance, the notice on the application ought to have been issued to counsel for the respondents and had the counsel for respondents raised any objection and the Court was not satisfied with the application & affidavit in support of the application then the petitioner ought to have been allowed to adduce evidence in support of his application. The application was filed without any delay, as 15th & 16h being holidays the	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	application was moved on 17.1.2005, therefore, if the impugned order is allowed to exist then the same will be an injustice to the petitioner. As such, the petition is allowed, order impugned is quashed and trial court is directed to first issue notice on the application to the respondents and if respondents disputed the contents of the petitioner's application then allow the counsel for the petitioner to adduce evidence in support of the application and thereafter, decide the application in accordance with law. It is made clear that if the respondents feel aggrieved by this order then they will be at liberty to approach this Court for modification of the order. With the direction and observation aforesaid, the petition stands disposed of. Consequently, I.A.No.7259/05 also stands disposed of. Certified copy as per rules. **Sd/-** **L.C. Bhadoo** **Judge**	

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